

**IN THE U.S. PATENT AND TRADEMARK OFFICE**

Application No.: 10/733,414

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Applicant: Caitlyn Curtin

Group Art Unit: 3749

Confirmation No: 9098

Examiner: Stephen Michael Gravini

Title: HANDS-FREE HAIR AND BODY DRYER THAT ALLOWS A  
WIDE RANGE OF MOTION

Attorney Docket: 3681-000001/US

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**APPELLANT'S SUPPLEMENTAL REPLY BRIEF ON APPEAL**

**MAIL STOP APPEAL BRIEF - PATENTS**

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February 29, 2008

In response to the Examiner's Supplemental Answer mailed October 30, 2007  
the Appellant submits the following Reply.

**BACKGROUND:**

In the Examiner's Supplemental Answer the Examiner sets forth interpretations of "means" clauses in the claims. The following "means" clauses are interpreted:

- (i) "movement means";
- (ii) "control means";
- (iii) "securing means"; and
- (iv) "muffler means".

In interpreting each of these "means" clauses the Examiner takes the position that because the specification says that a given "means" clause *may* comprise specific structure *or the like* (underlining and italics added), the Examiner can interpret the means clauses as including *any* means. The Examiner then goes on to reject the claims as before based on Jones. The Appellant respectfully disagrees. As the Examiner knows well, means clauses are interpreted based on the corresponding structure, material or acts disclosed in the specification and drawings and any equivalents thereof 35 U.S.C. § 112, sixth paragraph. Further, though Examiners may interpret the phrases in a claim broadly, any interpretation must be reasonable and consistent with the specification, *In re Hyatt* 211 F.3d 1367, 1372 (Fed. Cir. 2000).

The Examiner's interpretation of the means clauses in the claims as including any means is unreasonable because the specification and drawings set forth sufficient, specific examples of each mean clause. Further, the interpretations given to the means clauses by the Examiner strain credulity; they are highly unreasonable in light of the specification and can in no way be considered equivalents (i.e., drying a person's body is not the equivalent of drying an automobile). Rather than conduct a reasonable interpretation of the means clauses in the claims and then identify prior art that may disclose each means clause it appears as if the Examiner has first selected the prior art and then interpreted the means clauses in such a way that the clauses read on the prior art. In sum, the Examiner appears to interpret the means clauses however possible to reach a desired, anticipatory end. This is impermissible.

**ARGUMENTS:**

**(i) The "Means" Clauses Are Clearly Linked To Specific Structure In The Text And Drawings Of The Specification**

Appellant respectfully submits that the specification contains a description of structure in its text and drawings that are clearly linked to each of the "means" clauses listed above, as described below.

**(a) "movement means"**

For example, the "movement means" is described as consisting of first movement means 2 and second movement means 3 in FIG. 1 (see page 2)

which is described as depicting “a hair and body dryer 1”. The specification also describes the operation of the first and second movement means 2, 3 as used as a part of the hair and body dryer 1 (page 2). FIG. 1 also clearly shows the means 2, 3 as a part of the hair and body dryer 1.

Specific examples of the first and second movement means 2, 3 are described in the text and figures of the specification.

For example, the first movement means is described as comprising a “pivoting mechanism 2a or the like to move the dryer 1 to a desired position”. This pivoting mechanism 2a is not linked to any other structure in the specification except the first movement means.

The phrase, “or the like”, means --or its equivalent--. That is, rather than set forth all of the possible equivalents of a pivoting mechanism that are capable of moving the hair and body dryer 1 shown in FIG. 1 to a desired position (a practical impossibility) the Appellant simply wanted to provide notice to the reader that the specific pivoting mechanism 2a described in the specification and shown in FIG. 1 was but one example of such a mechanism that could be used to move the dryer 1 to a desired position.

The specification also describes, in the text and figures, a specific example of a second movement means. For example, the second movement means 3 “may also comprise a pivoting mechanism 3a to further allow the dryer 1 and diffuser 5 to be positioned over different parts of the surface of the

head and body". The pivoting mechanism 3a is not linked to any other structure in the specification except the second movement means.

Rather than making the specification's description of the claimed movement means indefinite, the disclosure set forth above demonstrates that the specification's description of the movement means is specific and definite; i.e., any means that is the equivalent of mechanism 3a must be able to position the hair and body dryer 1 over different parts of the surface of a head and body.

**(b) "control means"**

The control means 6 is shown in FIGs 1 and 2 and described in paragraphs [0018] through [0020] and [0025]. In these paragraphs the control means 6 is described as "a removable or built-in remote control for controlling the power on/off functions of the dryer 1, and/or controlling the initiation, cessation and positioning of the movement means 2, 2a and 3, 3a." In more detail, the control means 6 is described as comprising "circuitry or the like which is programmed (or programmable) to send instructions to both movement means 2, 2a, 3, 3a that result in an associated movement of lower body 2b of the dryer 1 or upper body 3b of the dryer 1 through a wide range of angles. Each movement of lower or upper body 2b, 3b results in a new position of diffuser 5 over a person's head or body."

In addition, the control means 6 is described as comprising "an infrared or radio frequency transceiver for detecting the presence or absence of a user,

i.e., whether a user remains close enough to the dryer 1 so that the dryer 1 remains on. For example, if a person walks a far enough distance away from the dryer 1, the control means 6 may detect such movement and send a signal to the power source of the dryer 1 in order to shut the dryer off.”

Yet further, the control means 6 is described as comprising “a timer which, regardless of the movement of a user, will track the amount of time the dryer 1 has been operating and automatically shut the dryer off if it exceeds a certain threshold (e.g., 15 minutes).”

Finally, the control means 6 is described as containing “sensors and appropriate circuitry to measure the internal temperature of the dryer 1 including the muffler 9 in order to determine whether to disconnect the dryer 1 from its power supply 7 in order to meet United Laboratories specifications or the like and to prevent the dryer 10 from malfunctioning or catching fire.”

As before the phrase, “or the like”, means --or its equivalent--. That is, rather than set forth all of the possible equivalents of a control mechanism that are capable of--- (i) sending instructions to both movement means 2, 2a, 3, 3a that result in an associated movement of lower body 2b of the dryer 1 or upper body 3b of the dryer 1 through a wide range of angles; (ii) detecting the presence or absence of a user; (iii) tracking the amount of time the dryer 1 has been operating and automatically shutting the dryer off if it exceeds a certain threshold; and (iv) measuring the internal temperature of the dryer 1 including the muffler 9 in order to determine whether to disconnect the dryer 1 from its

power supply 7 and to prevent the dryer 10 from malfunctioning or catching fire---a practical impossibility---the Appellant simply wanted to provide notice to the reader that the specific control mechanism 6 described in the specification and shown in FIGs. 1 and 2 was but one example of such a mechanism that could be used to implement functions (i) through (iv).

Rather than making the specification's description of the claimed control means indefinite, the disclosure set forth above demonstrates that the specification's description of the control means is specific and definite: any means that is the equivalent of mechanism 6 must be able to send instructions to movement means that result in an associated movement of a dryer through a wide range of angles over the surface of a person's head and body, detect the presence or absence of a person, track the amount of time a dryer has been operating and automatically shutting the dryer off if it exceeds a certain threshold, and measure an internal temperature of a dryer in order to determine whether to disconnect the dryer from its power supply to prevent the dryer from malfunctioning or catching fire.

**(c ) “securing means”**

The securing means 4 is shown in FIGs. 1 and 2 and is described in the specification in paragraphs [0016] as “removable securing means 4 for securing the dryer 1 to another object, such as a chair, pole, etc., for support.” More specifically, the specification states that the securing means 4 “may comprise a heavy-duty plastic clip, or a combination of a receptacle and main pole which

allows the dryer 1 to move up and down in a vertical motion in order to raise the height of the dryer 1, to name just a few examples.”

The phrase, “may comprise” means the corresponding structure and functions described in the specification are not meant to be the only examples of the securing means. That is, the described corresponding structure and functions are meant to be exemplary. Rather than set forth all of the possible equivalents of a securing mechanism that are capable of securing a dryer to another object for support and allowing a dryer to move up and down in a vertical motion in order to raise the height of the dryer---a practical impossibility---the Appellant simply wanted to provide notice to the reader that the specific securing mechanism 4 described in the specification and shown in FIGs. 1 and 2 were just examples of such a mechanism.

Rather than making the specification's description of the claimed securing means indefinite, the disclosure set forth above demonstrates that the specification's description of the securing means is specific and definite; i.e., any means that is the equivalent of mechanism 4 must be able to secure a dryer to another object for support and allow a dryer to move up and down in a vertical motion in order to raise the height of the dryer over different parts of the surface of a person's head and body.

**(d) “muffling” or “muffler” means**

The muffler or muffling means 9 is shown in FIG 2 and is described in the specification in paragraphs [0023] and [0024]. As described the muffler or



muffling means 9 “may comprise a baffling structure 12 made of a heat tolerant or heat resistant material capable of withstanding the temperatures of the air which exits from the air diffuser 5. This muffler means 9 is capable of being detached completely or switched into and out of the path of the air exiting the diffuser 5 by means of optional hinging means 11 or the like. The purpose of the baffling structure 12 is to reduce the noise which results from the air leaving the air diffuser 5 or from the motor (not shown in FIG. 2) used to operate the dryer 10. Such noise may interfere with the ability of a user to hear a phone or doorbell ring.”

In another embodiment the muffler or muffling means 9 “may be made of a heat sensitive material which is capable of changing color depending on the temperature of the material. For example, the material may change from a darker color to a lighter color when the temperature of the material reaches a certain threshold. This color change may act as a warning to a user of the dryer 10 that the temperature of the muffler 9 is reaching a dangerous level and should be removed.”

As explained above, the phrase, “may comprise” means the corresponding structure and functions described in the specification are not meant to be the only examples of the muffler or muffling means. That is, the described corresponding structure and functions are meant to be exemplary. Rather than set forth all of the possible equivalents of a muffling mechanism that are capable of reducing noise which results from air leaving an air diffuser

or from a motor used to operate a dryer and changing color depending on temperature as a warning to a user that the temperature of the muffler is reaching a dangerous level and should be removed ---a practical impossibility-- the Appellant simply wanted to provide notice to the reader that the specific muffler or muffling mechanism 9 described in the specification and shown in FIG 2 was just an example of such a mechanism.

Rather than making the specification's description of the claimed muffler/muffling means indefinite, the disclosure set forth above demonstrates that the specification's description of the muffler/muffling means is specific and definite; i.e., any means that is the equivalent of mechanism 9 must be able to reduce the noise which results from air leaving an air diffuser or from a motor used to operate a dryer and change color depending on temperature as a warning to a user that the temperature of the muffler is reaching a dangerous level.

**(ii) The "Means" Clauses Are Clearly Linked  
To A Dryer Used To Dry A Person' Body**

In order to reject the claims based on Jones (see below) the Examiner presents the rationale that "any means" is encompassed within the meaning of the phrases "movement means", "control means", "securing means" and "muffler/muffling means". As explained above this position is incorrect. Further, the Appellant points out that those "means" that are most likely within a reasonable and consistent interpretation of each of the four means

clauses are those that are related to the drying of a person's body because the four means clauses are clearly linked to the drying of a person's body.

In contrast, by no stretch of the imagination is a "means" that is related to the drying of an automobile, as set forth in Jones, within the scope of the four means clauses.

**(iii) The Examiner's Interpretations Are Unreasonable**

The Appellant respectfully submits that the Examiner's interpretation of the four means clauses as encompassing means to dry an automobile are not reasonable because such interpretations are clearly inconsistent with the specification.

**(iv) The Subject Matter Of The Claims Is Neither Anticipated Nor Suggested By Jones**

When the four means clauses discussed above are properly interpreted as means used to dry the body of a person it can be seen that Jones is not an anticipatory reference under §102(b) nor a suggestive reference under §103.

Rather than repeat the positions that the Appellant has set forth in her earlier briefs, the Appellant notes that she incorporates her earlier positions into this supplemental response and relies upon these earlier positions.

**Conclusion:**

For the reasons stated above and in Appellant's previous briefs, the Appellant respectfully requests that the members of the Board reverse the decision of the Examiner and allow claims 1-14.

APPELLANT'S SUPPLEMENTAL REPLY BRIEF ON APPEAL

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Respectfully submitted,

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